

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-212257

**DATE:** July 6, 1984

**MATTER OF:** Pacific Architects and Engineers, Inc.

**DIGEST:**

1. It is not improper under an OMB Circular A-76 cost comparison procurement for an agency to base its in-house estimate of the cost of performing on the results of a management study performed in accordance with cost comparison procedures, even though the information obtained through the study may not have been directly available to bidders.
2. The fact that historical workload data may have been inaccurate and thus not suitable by itself as a basis for bidders to estimate performance costs is not a sustainable basis of protest where it was the best objective data available.
3. Allegations that data furnished with the solicitation was out-of-date and confusing are untimely and will not be considered on the merits where the protester was aware of the alleged deficiencies prior to bid opening but did not file its protest until after bid opening.

Pacific Architects and Engineers, Inc. protests the Department of the Army's decision to cancel solicitation No. DAAG10-82-B-0308 which sought bids to perform installation support functions at Sharpe Army Depot, California. The Army conducted this two-step formally advertised procurement to determine whether it should continue performing this work in-house with government personnel or have it performed by a commercial firm. Based on a comparison of the government estimate with the low bid received, the Army determined that it would be less costly to retain the

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work in-house. Pacific challenges this determination, principally contending that the Army had an unfair, improper advantage in preparing its cost estimate. We deny the protest in part and dismiss it in part.

The step-one request for technical proposals was issued to prospective bidders on July 29, 1982 with instructions to submit a technical proposal explaining how the bidder intended to perform the tasks described in the Performance Work Statement (PWS). Technical proposals were to be submitted by December 3 at which time the Army would evaluate the proposals for technical acceptability. Firms submitting acceptable proposals would be invited to submit bids under step two of the procurement, and the low bid would be compared to the Army's in-house cost estimate under the cost comparison procedure implementing Office of Management and Budget Circular A-76 (A-76). If this comparison indicated that the contract cost would be more than 10 percent below the Army's projected in-house cost, the work would be contracted out.

Two firms submitting proposals--Pacific and Northrop Worldwide Aircraft Services, Inc.--were found technically acceptable and invited to submit bids under the February 22, 1983 step-two solicitation. At the March 21 bid opening it was revealed that the two firms bid on the 5-year performance period as follows:

Northrop	\$27,046,204.08
Pacific	\$29,439,824.00

Although Northrop's bid was low, it was significantly greater than the Army's in-house estimate of \$18,161,707.28. Northrop appealed the matter to an administrative board, which denied the appeal after adjusting the comparison to reduce the advantage of in-house performance to \$10,922,919.19.

Pacific, too, initially appealed to the board questioning the manner in which the Army's in-house estimate was prepared. Specifically, Pacific maintained the Army developed its estimate using data not in the solicitation and not available to bidders, and that the cost comparison therefore was inequitable. The board dismissed the appeal on the ground that, as only the

second low bidder, Pacific did not have sufficient interest in the matter. Pacific then timely protested the matter to our Office.<sup>1</sup>

Our Office will review protests concerning agency decisions to continue performing services in-house instead of contracting for them, solely to ascertain whether the agency adhered to the announced "ground rules" for the in-house/out-house cost comparison. Joule Maintenance Corporation, B-208684, September 16, 1983, 83-2 CPD ¶ 333. To succeed in its protest, a protester must demonstrate both that the agency failed to follow the established procedures and that this failure could have materially affected the outcome of the cost comparison. Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD ¶ 317.

Pacific's principal contention--that the Army improperly prepared its estimate using information not available to bidders--is founded on the Army's use of a detailed management study to determine the least costly manner of performing the work in the PWS. The study consisted of job observations, personal interviews and technical analysis aimed at promoting worker efficiency and developing a streamlined organization. Pacific claims that this detailed evaluation placed the Army in an unfairly superior competitive position since bidders were not afforded long-term access to the installation and were not permitted to interview or observe employees. Instead, Pacific continues, bidders were left to prepare their bids based on a two-day site visit and historical workload data which, it contends, the management study concluded was inadequate for this purpose.

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<sup>1</sup>As a tangential matter, we find Pacific interested to maintain this protest under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1984), since if we agreed with Pacific, bids could be recomputed based on the alleged improperly withheld data, the data could have a disparate effect on the bidders, and Pacific thus might displace Northrop as the low bidder entitled to participate in the comparison. The Army does not argue that Pacific is not sufficiently interested under our procedures.

We find that the Army's use of the management study in preparing its proposal was consistent with the cost comparison procedures and thus unobjectionable.

The Department of Defense Handbook DOD 4100.33H (April 1980) (implementing A-76 for this procurement), instructs agencies to "assure that government operations are staffed for the most efficient performance," and, toward this end, to precede contracting-out reviews with "internal management reviews and reorganizations." (Handbook p. 4.) This was precisely the Army's purpose in performing the management study in question. The quoted language, furthermore, appears under the heading "Calculating Costs of Government Operation," leading to the conclusion that the study is for use only by the agency and need not be distributed to bidders. This interpretation is confirmed in the August 1983 A-76 Supplement which states in Part III-2 that "[t]he results of the study will be used to develop the government cost to compare with the contractor cost to provide the product or service." There is no requirement in the Handbook or the Supplement that bidders be given an opportunity to perform an equivalent study of the installation and its employees.

Underlying Pacific's argument is its idea that the Army's management study violated the requirement that the government and commercial bidders figure their costs on the same basis; that the Army used the study to somehow "perfect" the historical workload data. We reject this view. The Handbook requires only that the government base its in-house estimate on the PWS<sup>2</sup> and performance levels presented to the bidders in the solicitation. Nothing in the record suggests the Army did otherwise. The Handbook does not prohibit the government from using available techniques to calculate the most efficient, least costly organization for performing the PWS in the solicitation, and the record indicates that this is what the Army did. Specifically, starting with the "base-line" workload data, the Army used investigations and employee interviews to develop "technical estimates" of the actual time necessary to

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<sup>2</sup>The Handbook uses the term "Statement of Work" (SOW) to refer to the tasks required to be performed. The solicitation uses the term "Performance Work Statement" (PWS). The terms are interchangeable.

perform certain types of work, and, in this manner, determined the lowest cost for performing each task. Such analysis is not improper merely because the resulting costs do not correspond to the historical workload data. Indeed, this approach is no different from that available to Pacific and the other bidders; while they could rely on historical data, so could they rely on the experience and expertise of their employees and managers to determine the least costly methods for performing the PWS tasks. Neither the bidders nor the Army were required to base their costs on the historical data alone.

As the Army points out, the fact that it had access to the installation, its employees, and other generated information not required to be made available to bidders results from the same inherent advantage enjoyed by any incumbent contractor. Neither A-76 nor the Handbook provides for the elimination of this advantage.

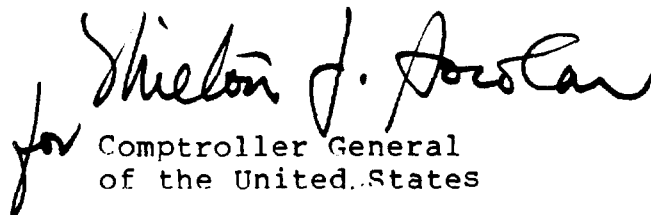
The fact that the 1981 historical workload data may have been an inaccurate gauge of efficient performance is not a sustainable basis of protest. Whether useful by itself as an estimating device, the 1981 data provided was the best objective data available. It thus satisfied the Handbook requirement (at p.6) that such data be furnished in the solicitation. That the data may not be accurate, furthermore, should be of no surprise to bidders; paragraph C.1.53.14 of the step-one solicitation specifically warned that the data was not intended "to specifically predict the workload to be accomplished or the actual costs which might occur. . . ." We have recognized, finally, that the PWS, not historical data, is the principal tool for use in calculating contract costs. See Joule Maintenance Corporation, supra; Technicolor Graphic Services, Inc., B-205242, May 24, 1982, 82-1 CPD ¶ 486.

Pacific raises the additional arguments that: (1) bidders were furnished an out-of-date railroad map which failed to reflect significant recent improvements; and (2) bidders were confused by an annual work plan that had not been prepared in accordance with Army regulations. Both allegations are untimely. Under our procedures, alleged improprieties on the face of the solicitation must be raised in a protest filed prior to bid opening. 4 C.F.R. § 21.2(b)(1). The record indicates that Pacific was well aware of these alleged

deficiencies in the information made available to bidders as a part of the solicitation process during preparation of its bid. Its protest, filed after the March 21 opening date, therefore is untimely as to these allegations. See ISS Energy Services, Inc., B-211171, Aug. 1, 1983, 83-2 CPD ¶ 145. Further, it appears Pacific was not prejudiced by the out-of-date railroad map since it was able to obtain an updated map prior to bid opening under the Freedom of Information Act.

Pacific finally alleges, without supporting argument or documentation, that the Army based its estimate on "a scope of work different than that in the RFTP." We find this allegation unsupported in the record.

The protest is denied in part and dismissed in part.

  
for Comptroller General  
of the United States